

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD., a Japanese corporation,) CIVIL NO. CV 04-00124 ACK/BMK
Plaintiff,) CONSOLIDATED CASES
vs.) DECLARATION OF QK HOTEL, LLC, a Hawai'i limited liability company, et al.,
Defendants,)
and)
FRANKLIN K. MUKAI,)
Third-Party Plaintiff,)
vs.)
SPORTS SHINKO (USA) CO.; LTD., a Delaware corporation, et al.,)
Third-Party Defendants.)
SPORTS SHINKO (USA) CO., LTD., a Delaware corporation,) CIVIL NO. CV 04-00125 ACK/BMK
Plaintiff,)
vs.)
PUKALANI GOLF CLUB, LLC, a Hawai'i limited liability company, et al.,)
Defendants,)
and)
FRANKLIN K. MUKAI,)

Third-Party)
Plaintiff,)
)
vs.)
)
SPORTS SHINKO CO., LTD.,)
a Japan corporation, et al.,)
)
Third-Party)
Defendants.)

SPORTS SHINKO (USA) CO., LTD, a) CIVIL NO. CV 04-00126
Delaware corporation,) ACK/BMK
)
Plaintiff,)
)
vs.)
)
KIAHUNA GOLF CLUB, LLC,)
a Hawai'i limited liability)
company, et al.,)
Defendants,)
and)
FRANKLIN K. MUKAI,)
Third-Party)
Plaintiff,)
vs.)
SPORTS SHINKO CO., LTD.,)
a Japan corporation, et al.,)
Third-Party)
Defendants.)
SPORTS SHINKO CO., LTD., a) CIVIL NO. CV 04-00127
Japanese corporation,) ACK/BMK
Plaintiff,)
vs.)
OR HOTEL, LLC, a Hawai'i)
limited liability company,)

et al.,)
)
)
Defendants,)
)
)
and)
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)
FRANKLIN K. MUKAI,)
)
)
Third-Party)
Plaintiff,)
)
)
vs.)
)
)
SPORTS SHINKO (USA) CO., LTD.,)
a Delaware corporation, et al.,)
)
)
Third-Party)
Defendants.)
)

SPORTS SHINKO (USA) CO., LTD.,) CIVIL NO. CV 04-00128
a Delaware corporation,) ACK/BMK
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Plaintiff,)
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vs.)
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MILILANI GOLF CLUB, LLC,)
a Hawai`i limited liability)
company, et al.,)
)
)
Defendants,)
)
)
and)
)
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FRANKLIN K. MUKAI,)
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Third-Party)
Plaintiff,)
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vs.)
)
)
SPORTS SHINKO CO., LTD.,)
a Japan corporation, et al.,)
)
)
Third-Party)
Defendants.)
)

DECLARATION OF GLENN T. MELCHINGER

Pursuant to 28 U.S.C. § 1746, I declare that:

1. I am an attorney with the law firm of Alston Hunt Floyd & Ing, counsel for Plaintiff and Third-Party Defendants, SPORTS SHINKO CO., LTD.; SPORTS SHINKO (HAWAII) CO., LTD.; SPORTS SHINKO (MILILANI) CO.; SPORTS SHINKO (KAUAI) CO., LTD.; SPORTS SHINKO (PUKALANI) CO., LTD.; SPORTS SHINKO RESORT HOTEL CORPORATION; SPORTS SHINKO (WAIKIKI) CORPORATION; and OCEAN RESORT HOTEL CORPORATION (the "SS Entities").

2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. In April, 2004, I traveled to Japan to review and take custody of the business records of Sports Shinko Co., Ltd. I reviewed the documents with the Trustee's staff for three weeks in Osaka, and shipped home all the business records relevant to the Hawaii litigation to my office, Alston Hunt Floyd & Ing. I am the agent for service of process for the Hawaii Sports Shinko entities and our law office is now the repository and custodian of the relevant Sports Shinko records regarding this litigation.

4. Exhibit "15" is marked "Confidential" and is subject to a Stipulated Protective Order filed herein on January 25, 2005, and may only be filed under seal and only

upon "prior application to and approval by the Court. *Id.* at Par. 8. The designation in this case has been made by Plaintiff to protect the personal financial information of Bert Kobayashi and others, from disclosure.

5. Attached hereto as Exhibit "1" are true and correct copies of documents bates stamped pages 209 0341 and 209 0345 from the Sports Shinko business records from Japan, paired with English translations of said documents of prepared by Steve Silver. See Declaration of Steve Silver.

6. Attached hereto as Exhibit "2" is a true and correct copy of excerpts from the April 20, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 23 to said deposition.

7. Attached hereto as Exhibit "3" are true and correct copies of excerpts taken from the April 19, 2005 and April 20, 2005 oral depositions of Satoshi Kinoshita, and true and correct copies selected portions of Exhibits 5 through 9 of said deposition and a copy of the Annual Report for the Year Ended December 31, 2001 for Resort Management Services (Hawaii), Inc. Obtained from the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division.

8. Attached hereto as Exhibit "4" is a true and correct copy of excerpts taken from the April 20, 2005 oral deposition of Satoshi Kinoshita.

9. Attached hereto as Exhibit "5" is a true and correct copy of excerpts from the April 20, 2005 oral deposition of Satoshi Kinoshita.

10. Attached hereto as Exhibit "6" is a true and correct copy of excerpts from the April 20, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 28 to said deposition.

11. Attached hereto as Exhibit "7" is a true and correct copy of excerpts from the April 19, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 1 to said deposition, paired with the English translation of said exhibit prepared by Steve Silver. See Declaration of Steve Silver.

12. Attached hereto as Exhibit "8" is a true and correct copy of excerpts from the April 20, 2005 oral deposition of Satoshi Kinoshita, and a letter from Franklin K. Mukai and Eric T. Kawatani to Tsugio Fukuda dated August 31, 2000. The latter was provided to me by the Deputy Trustee as part of the business records of Sports Shinko in Osaka, Japan.

13. Attached hereto as Exhibit "9" is a true and correct copy of excerpts from the April 21, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 48 to said deposition.

14. Attached hereto as Exhibit "10" is a true and correct of the Deposit Receipt offer and Acceptance (DROA) signed and dated 1/1/02 by David Resnick regarding the Kiahuna Golf Properties submitted to Toshio Kinoshita and Tsugio Fukuda by Terry P. Kamen, Realty at Makai Properties.

15. Attached hereto as Exhibit "11" is a true and correct copy of excerpts from the April 21, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 43 to said deposition. Also attached is a true and correct copy of an October 1, 2001 fax from Kent R. Smith of Smith Development addressed to Satoshi Kinoshita, offering \$11.5 million for the Sports Shinko Pukalani properties 013 1634R -1637, which was recovered from Sports Shinko files held by the McCorriston Miller Mukai MacKinnon law firm, delivered to Alston Hunt Floyd & Ing pursuant to subpoena.

16. Attached hereto as Exhibit "12" is a true and correct copy of excerpts from the April 21, 2005 oral deposition of Satoshi Kinoshita, a true and correct copy of Exhibit 45 to said deposition, and a true and correct copy of a letter from Everett R. Dowling to Tsugio Fukuda dated October 23, 2001 sent via facsimile.

17. Attached hereto as Exhibit "13" is a true and correct copy of excerpts from the April 21, 2005 oral

deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 46 to said deposition.

18. Attached hereto as Exhibit "14" is a true and correct copy of a July 15, 2002 letter from an offeror on the to Douglas A. Pothul regarding an offer to purchase Queen Kapiolani Hotel for \$4 million, which was sent by Douglas Pothul to Alston Hunt Floyd & Ing in its present redacted form.

19. Attached hereto as Exhibit "15" is a true and correct copy of excerpts of the records Deposition of Scott Takahashi, Custodian of Records of Bank of Hawaii, and true and correct copies of documents bates stamped 009 0725 - 009 0733 produced in said records deposition, which were produced to Alston Hunt Floyd & Ing by the McCorriston Miller Mukai & MacKinnon law firm pursuant to subpoena.

20. Attached hereto as Exhibit "16" is a true and correct copy of a letter from Wayne Tanigawa to Sports Shinko entities dated January 24, 2002 regarding the Purchase and Sale Agreement dated January 15, 2002. The same schedule is also attached to Defendant's Concise Statement of Facts in Exhibit "T".

21. Attached hereto as Exhibit "17" is a true and correct copy of a letter from Satoshi Kinoshita to Franklin Mukai, Esq. regarding the President's Plan. It is an identical copy of the document attached to the Declaration

of David Klausner as Exhibit "K-C" submitted for the Court's convenience. The document reproduced here was recovered from a forensic image of a hard drive formerly used by Satoshi Kinoshita and located in his Ocean Resort Hotel Waikiki office ("ORH Office"). The Trustee, through our office, recovered the hard drive in his official capacity, along with the contents of the ORH Office belonging to Sports Shinko. I shipped the hard drive to David Klausner, who created a forensic image and analyzed it as set forth in his Declaration. This Exhibit was recovered from this hard drive.

22. Attached hereto as Exhibit "18" are true and correct copies of documents selected from documents produced by Grant Thornton to Alston Hunt Floyd & Ing pursuant to a subpoena served by the KG Defendants that discuss selling the assets to a "Kinoshita Group".

23. Attached hereto as Exhibit "19" is a true and correct copy of excerpts from the April 21, 2005 oral deposition of Satoshi Kinoshita.

24. Attached hereto as Exhibit "20" is a true and correct copy of excerpts from the April 21, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 57 to said deposition.

25. Attached hereto as Exhibit "21" is a true and correct copy of excerpts from the April 21, 2005 oral

deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 50 to said deposition.

26. Attached hereto as Exhibit "22" is a true and correct copy of excerpts from the April 21, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 51 to said deposition.

27. Attached hereto as Exhibit "23" is a true and correct copy of a list of files on the McCorriston Miller Mukai MacKinnon network produced pursuant to order of the U.S. Bankruptcy Court to me, and a printout of an electronic document created on December 6, 2001 by "SCH", Stacey Hee, which purports to be a draft Purchase and Sale Agreement for the Stock of Sports Shinko (Hawaii) Co., Ltd., which was obtained electronically through special proceeding Rule 2004 discovery.

28. Attached hereto as Exhibit "24" is a true and correct copy of excerpts from the April 21, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 54 to said deposition.

29. Attached hereto as Exhibit "25" is a true and correct copy of excerpts from the April 21, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 55 to said deposition.

30. Attached hereto as Exhibit "26" is a true and correct copy of excerpts from the April 20, 2005 oral

deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 29 to said deposition.

31. Attached hereto as Exhibit "27" are true and correct copies of Final Seller Statements for Mililani Golf Club, Pukalani Golf Club, Kiahuna Golf Club, and Ocean Resort Hotel recovered from the McCorriston law firm Sports Shinko files pursuant to subpoena.

32. Attached hereto as Exhibit "28" are true and correct copies of the State of Hawaii, Department of Taxation, Report of Bulk Sale or Transfers regarding Ocean Resort Hotel, Pukalani Golf Club, Queen Kapiolani Hotel, Kiahuna Golf Club, and Mililani Golf Club dated February 20, 2002, recovered from the McCorriston law firm Sports Shinko files pursuant to subpoena.

33. Attached hereto as Exhibit "29" are true and correct copies of the State of Hawaii, Department of Taxation, Conveyance Tax Certificates for Ocean Resort Hotel, Pukalani Golf Club, Queen Kapiolani Hotel, Kiahuna Golf Club, and Mililani Golf Club, recovered from the McCorriston law firm Sports Shinko files, pursuant to subpoena.

34. Attached hereto as Exhibit "30" is a true and correct copy of excerpts from the April 20, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 30 to said deposition.

35. Attached hereto as Exhibit "31" is a true and correct copy of the Declaration of Keijiro Kimura in Support of Petition to Commence Case Ancillary to Foreign Proceeding Under 11 U.S.C. § 304 (without exhibits) dated November 20, 2002.

36. Attached hereto as Exhibit "32" is a true and correct copy of the docket obtained from the U.S. District Court website regarding the *David Resnick vs. Sports Shinko (Kauai) Co., Ltd, et al.*; Civil No. 02-00062 HG BMK and a true and correct copy of the First Amended Complaint filed February, 2002.

37. Attached hereto as Exhibit "33" is a true and correct copy of excerpts from the April 20, 2005 oral deposition of Satoshi Kinoshita, and a true and correct copy of Exhibit 37 to said deposition.

38. Attached hereto as Exhibit "34" is a true and correct excerpt of relevant portions of an English translation of the Foreign Exchange and Foreign Trade Control Act of Japan from the Statutory Materials Volume of Matthew Bender, *Doing Business in Japan*, by Zentaro Kitagawa, for the Court's reference.

39. Attached hereto as Exhibit "35" is a true and correct copy of an English translation of Article 423 of the the Japan Civil Code, for the Court's reference.

40. Attached hereto as Exhibit "36" is a true and correct copy of an Order No. 21639 In the Matter of the Application of Pukalani STP Co., Ltd. for Review and Approval of Rate Increases and Revised Rate Schedules filed February 7, 2005, obtained from the Public Utilities Commission website.

41. On or about October 15, 2005, counsel for the KG Defendants represented to Paul Alston and me in a meet and confer that the Sports Shinko Maui Sewage Treatment Plant owned by Pukalani STP Co., Ltd. was still functioning.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Honolulu, Hawai'i on February 17, 2006.

/S/ Glenn Melchinger
GLENN T. MELCHINGER